

# Police Prosecutor Update

Issue No. 192  
November 2007

A recent Court of Appeals case addressed an issue not decided before by Indiana courts: whether a police officer can ask a motorist stopped for a routine traffic infraction questions unrelated to the initial reason for the stop (aside from questions related to weapons), specifically about drug possession.

The facts are that on a summer afternoon, the defendant and a friend were operating their mopeds on a city street. The street had no centerline markings on the pavement. A city police officer was traveling the opposite direction toward the mopeds. He observed that the mopeds were swerving and crossing what he perceived to be the center point of the street. He believed the defendant to be under 18 years of age, and Indiana law requires riders of that age to wear goggles and a helmet, which the defendant was not.

The officer initiated a traffic stop when he pulled his squad car in front of the mopeds and “burped” his siren a few times. The officer exited his car and approached the defendant, explaining the reason for the stop. The officer noted that the defendant “appeared to be nervous” by not looking directly at him and by speaking slowly in response to the officer’s questions. Because of this nervousness, the officer asked the defendant if he had “any guns, drugs, or anything” on his person that might harm the officer. He testified that if he felt there was something odd or unusual about a traffic stop, he routinely asked this question. The defendant responded that he had “a couple of dime bags” in his front pocket. At the officer’s request, the defendant gave permission to remove the bags. The officer then placed the defendant in handcuffs and seated him in his patrol car.

The Court of Appeals initially noted that it was addressing the propriety of the “increasingly common practice of officers asking about the presence of illegal substances during an otherwise routine traffic stop.” The court would determine whether the officer’s question concerning drugs was permissible under the Indiana Constitution’s protection against unreasonable searches and seizures, which requires police activity to be reasonable under all the circumstances.

IC 34-28-5-3 permits an officer to detain a person who he in good faith believes has committed an infraction or ordinance violation for a time sufficient to inform him of the allegation, obtain his name, address, and date of birth, or his driver’s license, and allow him to execute a notice to appear. The Constitution permits the officer to detain the motorist briefly only as necessary to complete the officer’s work related to the illegality for which the motorist was stopped. Our Supreme Court has stated that where an officer stops a vehicle for a traffic violation, a request for the driver’s license and vehicle registration, a license plate check, a request to search the vehicle, and an inquiry regarding whether the driver has a weapon in the vehicle are within the scope of reasonable detention. However, the Court of Appeals stated that it was the further inquiry of asking the driver whether he possessed drugs that troubled the court.

The State pointed out that the officer only asked about “guns and drugs” because the defendant appeared nervous and did not make eye contact. While nervousness may indicate potential wrongdoing, our Supreme Court has ruled that other evidence that a person may be engaged in criminal activity must be present before nervousness will support the suspicion necessary to support detention. Also, the officer’s question whether the defendant possessed drugs was not related either to the purpose of the stop or to officer safety. In the court’s view, to allow police to question individuals during a traffic stop about the presence of drugs would open the door to all sorts of questions, and routine traffic stops are not the place for such inquiries. Therefore, the court decided that the officer’s question about drugs was not reasonable within the meaning of the Indiana Constitution.

One judge dissented, noting the case law on the issue from other jurisdictions is mixed, and he would side with those cases holding that police officers generally may ask such questions. Also, in his view, a person who is simply asked whether there are any drugs in his or her possession has the option of not answering, or answering falsely, and terminating the investigation at that point.

It will be interesting to see if the State tries to appeal this to the Supreme Court.

Case name: *State v. Washington*, \_\_\_ N.E.2d \_\_\_ (Ind. Ct. App. 2007)